

LIBRARY

SUPREME COURT U. S.

Office-Supreme Court, U. S.

FEB 19

JAMES R. M. J. BIK

Supreme Court of the United States

OCTOBER TERM, 1959

No. ~~50~~ 19

UNITED MINE WORKERS OF AMERICA, and UNITED
MINE WORKERS OF AMERICA, DISTRICT 28, *Petitioners*,

v.

BENEDICT COAL CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITIONERS' REPLY BRIEF TO OPPOSITION BRIEF

WELLY K. HOPKINS

HARRISON COMBS

WILLARD P. OWENS

900 Fifteenth St., N. W.

Washington, D. C.

M. E. BOIARSKY

511 Kanawha Valley Building

Charleston, West Virginia

Attorneys for Petitioners.

INDEX

SUBJECT INDEX	Page
ARGUMENT	2
I	2
II	4
CONCLUSION	7

TABLE OF CASES CITED

<i>Boeing Airplane Co. v. Aeronautical etc. Assn.,</i> DC, Wash., 91 F. Supp. 596, aff'd 9 Cir., 188 F. 2d 356, cert. den. 342 U. S. 821	5
<i>Franklin Electric Construction Co.,</i> 42 LRRM 1301	6
<i>Garmeada Coal Co. v. International Union,</i> UMWA, 1954, D.C., E.D., Ky., 122 F. Supp. 512, aff'd 6 Cir., 230 F. 2d 945	2, 4
<i>International Ladies Garment Workers Union,</i> AFL v. NLRB, 99 App. D.C. 64, 237 F. 2d 545	6
<i>International Union, UMWA, v. National Labor</i> <i>Relations Board,</i> DC Cir., 257 F. 2d 211	4, 5
<i>Miles Branch Coal Company v. UMWA,</i> 1958, D.C., DC, 162 F. Supp. 65	6
<i>UMWA v. Coronado Coal Co.,</i> 259 U. S. 344, 395	2, 5, 6, 7
<i>United Construction Workers v. Haislip Baking</i> <i>Company,</i> 4 Cir., 223 F. 2d 872	7
<i>United Electrical Radio and Machine Workers of</i> <i>America v. Oliver Corporation,</i> 8 Cir., 205 F. 2d 376, 386	7
<i>United States v. International Union, UMWA,</i> 1950, D.C., DC, 89 F. Supp. 179	3
<i>W. L. Mead, Inc. v. International Brotherhood of</i> <i>Teamsters,</i> 1 Cir., 230 F. 2d 576	7

Supreme Court of the United States

OCTOBER TERM, 1958

No. 563

UNITED MINE WORKERS OF AMERICA, and UNITED
MINE WORKERS OF AMERICA, DISTRICT 28, *Petitioners*,

v.

BENEDICT COAL CORPORATION.

**PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

PETITIONERS' REPLY BRIEF TO OPPOSITION BRIEF

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

No attempt will be made to reply, *seriatim*, to the arguments advanced by Benedict Coal Corporation in its brief in opposition to the granting of a writ of certiorari herein.¹ Petitioners submit that the answers thereto are contained in their Petition; but in addition to such discussions, the Court's attention is directed to the following particular matters appearing in the opposition brief. These discussions will follow the order of argument as set forth in the opposition brief.

¹ Herein, Benedict Coal Corporation will be referred to as "Benedict." The abbreviation "O. B." refers to Benedict's opposition brief.

ARGUMENT

I.

Contrary to Benedict's argument (O. B. 17) that Petitioners are liable because they defaulted in their 1950 Agreement obligation by not exercising their best efforts through available disciplinary measures to prevent work stoppages by strike pending adjustment of disputes, the Sixth Circuit's predicate of union responsibility is that the right to strike was precluded by the Agreement. Further, while Benedict points to evidence that neither Scroggs nor the District took disciplinary action toward local members to discourage or prevent work stoppages (O. B. 17), the evidence is that Benedict made no demand upon UMW for such action (R. 501a-2a), and there is no evidence that disciplinary action would have prevented strike activity. In *Garmeada Coal Co. v. International Union, UMWA*, 1954, D.C., E.D., Ky., 122 F. Supp. 512, aff'd 6 Cir., 230 F. 2d 945, which, like the instant case, involved the 1950 Agreement, the district court, noting that "Even the suggestion that their rebellious conduct might result in revocation of their Union charter seemed to have little effect," declared that the men were "pursuing their right to strike" and that union representatives "did all that could reasonably have been expected of them in observing their duty to exercise their best efforts to maintain the integrity of the contract and to prevent the strike" (122 F. Supp. 518), which is what was done in the instant case as pointed out in the Petition herein, p. 45. In the first *Coronado* case,² contention was made that,

² *UMWA v. Coronado Coal Co.*, 259 U. S. 344, 395.

because UMW had disciplinary control over its members, its failure to suspend or expel union members allegedly guilty of illegal acts in furtherance of the union cause made UMW liable; but this Court rejected such contention, asserting UMW's responsibility "is a mere question of actual agency." So, too, in *United States v. International Union, UMW*, 1950, D.C., DC, 89 F. Supp. 179, argument that UMW was guilty of court contempt in that it had failed to revoke local union charters when union members voted not to return to work, was rejected by the district court which declared (p. 181) "There is no showing in the record that such action would have been appropriate." Herein, there is no evidence that disciplinary action would have prevented work stoppages. Indeed, in view of the spontaneous action of local union members depicted in the record in relation to the work stoppages, employee responsibility for the stoppages would have been incapable of ascertainment; disciplinary action might well have caused complete union loss of control over the men, resulting in the employees' being taken from the contract's coverage; and since the primary interest was to return the Benedict operation to work, in processing and settling the several disputes under the grievance machinery, as the record shows was done, Benedict's interests were better served than if disciplinary action had been taken, even if it had been required, which is denied by petitioners.

Further Benedict argument for attaching responsibility on petitioners (O. B. 17) that under the 1952

Agreement "both parties still agreed to maintain the integrity of the contract" finds ready answer in the language above-quoted from *Garmeada* and in the fact that neither the Sixth Circuit's opinion nor the District Court's charge (R. 729a) used the "integrity" clause of the 1952 Agreement as a basis for holding petitioners liable. Benedict's obvious argument that the "integrity" clause is a "no-strike" pledge is fully answered and rejected in *International Union, UMW, v. National Labor Relations Board*, DC Cir., 257 F. 2d 211, wherein that court, referring to the clause, said "It is likely that the agreement has been of great benefit to the operators and the union and that most disputes have been resolved by the use of the grievance machinery" (p. 218), which is precisely what occurred in the situations depicted in the instant record.

II.

Benedict's argument (O. B. 19-20) that UMW is responsible for the acts of a district field representative because in working on "disputes or local troubles, he was doing work provided for by the contract agreed to by the international union" finds challenge in both the evidence and judicial decisions.

Benedict's argument ignores that the 1950-1952 Agreements, in providing the several steps constituting the grievance machinery procedures, impose no obliga-

³ The 1952 Agreement became effective October 1, 1952, and all alleged stoppages occurred before that date except the incidents allegedly relating to Big Mountain Coal Company (see Petition, p. 16, 23-5): hence, Benedict's argument has nothing to do with the remaining 7 alleged stoppages, and this is admitted by Benedict (O. B. 17).

tions upon UMW and indeed no such obligations were assumed by UMW. Instead, grievances were to be processed by a mine committee, a creature of the Agreements (which designated not only the membership number but delineated that membership selection on the committee should be by Benedict's employees), and by District representatives (R. 123a, 104a-5a). The grievance procedures did not create joint obligations so as to impose any duty on UMW out of which it could be argued that an agency relationship arose. *Boeing Airplane Co. v. Aeronautical etc Assn.*, DC, Wash., 91 F. Supp. 596, aff'd 9 Cir., 188 F. 2d 356, cert. den. 342 U. S. 821. In *Coronado* (259 U. S. 344), it was asserted that because the District was doing UMW's work, this circumstance made the District UMW's agent; but the Court, rejecting such contention, said (p. 395):

"But it is said that the district was doing the work of the International and carrying out its policies, and this circumstance makes the former an agent. We cannot agree to this in the face of the specific stipulation between them that in such a case, unless the International expressly assumed responsibility, the district must meet it alone."

Argument paralleling that of Benedict was pressed by the National Labor Relations Board in *International Union, UMWA v. NLRB*, *supra*, and while the District of Columbia Circuit "did not decide" the issue "in view of our disposition of the case" on the ground that the 1952 Agreement did not forbid strike action, that court stated its inclination to agree that "wild-cat" strike action without union authorization did

not impose responsibility upon either UMW or a district affiliate (257 F. 2d 218). Significantly, subsequently the Board itself, in *Franklin Electric Construction Co.*, 42 LRRM 1301, declared that a local affiliate is not a mere branch or arm of a parent labor organization but a legal entity apart from it and that the parent's legal responsibility must rest upon actual agency.

In its opposition brief (p. 20), Benedict asserts that the "Coronado Coal Case is no precedent here," but as pointed out in the Petition filed herein (p. 37), current efficacy of the Coronado doctrine in determining union responsibility in the field of labor relations is mirrored by decisions of federal courts and the National Labor Relations Board. In addition to the cases cited therein (p. 37-38), the District of Columbia Circuit, in *International Ladies' Garment Workers Union, AFL v. NLRB*, 99 App. D.C. 64, 237 F. 2d 545, recognized that the Taft-Hartley Act's legislative history makes it plain that "imputation of the acts of one person to another" is forbidden "except when the one is acting as agent for the other," citing and applying the *Coronado* doctrine (237 F. 2d 551-2). So, too, in *Mile Branch Coal Company v. UMWA*, 1958, D.C., DC, 162 F. Supp. 65-6, UMW liability was asserted on the theory that the District and the local union were its agents and that District representatives were in fact UMW agents; but the District Court held that "The mere fact . . . that Districts were constituent bodies embraced within the International Union . . . does not

⁴ The District of Columbia Circuit rendered its decision on June 12, 1958, and the *Franklin Electric Construction Co.* case was handed down on July 24, 1958.

in and of itself make . . . the District . . . an agent of the International Union," citing and implementing the Coronado case (259 U. S. 344, 395), as well as the Fourth Circuit's decision in *United Construction Workers v. Haislip Baking Company*, 4 Cir., 223 F. 2d 872, that a union's regional director and its field representatives were not agents "who could bind the National organization."

Benedict's citation (O. B. 19) of *W. L. Mead, Inc. v. International Brotherhood of Teamsters*, 1 Cir., 230 F. 2d 576, is wholly abortive on the issue of agency since the question of agency was not an issue for determination by the First Circuit. Nor is Benedict's citation (O. B. 19) of *United Electrical Radio and Machine Workers of America v. Oliver Corporation*, 8 Cir., 205 F. 2d 376, apposite, since, as the opinion (p. 382) shows, "Hobbie was the official representative of the International Union for District 8," whereas in the instant case Scroggs was not an official representative of UMW. The opinion in the *Oliver* case shows further that Hobbie "had signed the [collective bargaining] contract as representative of the International Union" (205 F. 2d 386). It is thus clear that there is no analogy between the *Oliver* case and the instant one.

CONCLUSION

For the reasons set forth herein, in addition to those set forth in the Petition for Writ of Certiorari, Petitioners, and each of them, submit that Benedict's opposition to the granting of said Petition is without merit and should be rejected and again pray that the

Petition for Writ of Certiorari heretofore filed should be granted and that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Sixth Circuit, entered in its Case No. 13,056, on September 26, 1958, as set forth in said Petition.

Respectfully submitted,

WELLY K. HOPKINS

HARRISON COMBS

WILLARD P. OWENS

900 Fifteenth St., N. W.

Washington, D. C.

M. E. BOIARSKY

511 Kanawha Valley Building

Charleston, West Virginia.

Attorneys for Petitioners.